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Attention: MR V RAMAANO
By Email: cannabisbill@parliament.gov.za

WRITTEN SUBMISSIONS ON THE CANNABIS FOR PRIVATE PURPOSES BILL [B19-2020]

SUMMARY OF SUBMISSIONS

1. The Bill has two major deficiencies.
 - 1.1. Firstly, the Bill seems to tie any future “commercial activities” to the notion of “recreational cannabis”. However, in many major jurisdictions such as Canada and California the first cannabis consumer markets were medicinal in the sense that patients required medical prescriptions to purchase cannabis. This conceptual flaw in the Bill should be remedied.
 - 1.2. Secondly, the Bill envisages future national legislation to permit commercial activity in recreational cannabis. It is meaningless for Parliament to grant itself the right to do something that it already has the power to do, as the Bill purports to do in section 1A(2). This legal absurdity suggests that talk of commercial activity in the Bill, while encouraging, is, in substance, mere lip service. Any future legislative process that would likely be as drawn-out as the present one. It seems a major missed opportunity not to advance this aspect a little further in this Bill. Our proposal in this regard is that the Bill should empower the Minister of Justice and Correctional Services to promulgate regulations, in concurrence with the Minister of Trade, Industry and Competition, permitting commercial activities in cannabis.

Board

Dr Bernard Fanaroff (Chair), Dr Tanya Abrahamse, Dr Jack Lewis,
Zackie Achmat, Katlego Motene, Johan Nel, Doron Isaacs (CEO).

SUMMARY OF PREVIOUS SUBMISSIONS

2. In October 2020 we made a submission on the previous version of the Cannabis for Private Purposes Bill [B19-2020] [“the Bill”]. We did so as CannaKaroo (Pty) Ltd but our company has since been renamed Karoo Bioscience (Pty) Ltd, while remaining the same company with the same board and management.
3. Our October 2020 submission included substantial evidence and argument drawing upon the medical, economic and criminal justice literatures pertaining to cannabis. For example, an extensive survey published in 2019 by the *Lancet*, the world’s leading medical journal, stated that cannabis “causes much less harm than do illicit opioids and stimulants or legal drugs such as alcohol and tobacco. The comparatively high rates and modest harms of cannabis use have prompted calls for governments to legalise cannabis for medicinal and non-medicinal use since the late 1960s. These calls have resulted in major changes in cannabis regulation in the Americas that might prompt similar policy changes in other countries in the future.”¹

Similarly, a major study reporting on the Global Burden of Disease Project stated: “In the Global Burden of Disease project, regular cannabis use was found to produce much less harm than regular alcohol and tobacco use. In Australia and Canada, two countries with a high prevalence of use, cannabis made a much smaller contribution to disease burden.”²

4. This submission will not repeat those arguments, but the October 2020 submission is available on request. This submission, which is briefer than the earlier one, is restricted to addressing the recent changes made to the Bill.
5. We also wish to state that this brief submission will focus on the major deficiencies in the Bill and will not address those aspects of the Bill that are laudable. We wish to acknowledge, though, that the Bill is laudable in various respects.

NEW SUBMISSIONS ON REVISED BILL: MEDICINAL USE

6. The revised Bill purports to expand access on medical grounds but in the main grants those who obtain the required medical certificate the same rights to private cultivation, possession and use as have been enjoyed by the general public since 2018. Those with medical prescriptions will still not be permitted by this Bill to purchase cannabis.
7. The Bill links “commercial activities” exclusively to “recreational use”, albeit postponing this possibility to be dealt with by a future legislative process. It is not clear

¹ Hall, W., Stjepanović, D., Caulkins, J., Lynskey, M., Leung, J., Campbell, G., & Degenhardt, L. (2019). Public health implications of legalising the production and sale of cannabis for medicinal and recreational use. *The Lancet*, 394 (10208), 1580-1590.

² B Calabria, L Degenhardt, W Hall, M Lynskey, ‘Does cannabis use increase the risk of death? Systematic review of epidemiological evidence on adverse effects of cannabis use’, 29 (2010) *Drug and Alcohol Review* 318.



why the Bill fails to recognise that those requiring cannabis for medicinal purposes would benefit enormously if they were able to legally purchase the product.

8. In major jurisdictions such as Canada and California there was almost a decade during which time commercial activities were permitted in respect of cannabis, and legal markets for consumers developed, but use was confined to those with medical certificates buying the product from licensed cannabis pharmaceutical dispensaries. This possibility is seemingly foreclosed by the Bill in its present form since “commercial activities” are only envisaged for “recreational use”. This is a conceptual error that must be remedied.
9. The table below illustrates the possible regimes in a simplified schematic:

	Medicinal	Recreational
Non-commercial	1. User must have medical certificate and conduct home-grow or be gifted some product by a home-grower. No regulatory quality control is possible.	2. User must produce home-grown cannabis. No regulatory quality control is possible.
Commercial	3. User must have a medical certificate and can therewith purchase product from SAHPRA-licensed producers subject to quality control.	4. Adults can purchase product from SAHPRA-licensed producers subject to quality control.

Figure 1: Simplified Schematic of Cannabis Regulatory Regimes.

10. The Bill permits options 1 and 2 above. It postpones option 4 to some future legislative process, which, realistically, could take a decade to unfold. Option 3 is not contemplated. We recommend that the drafters include option 3 in the Bill and expressly permit it, subject to the passing of regulations.
11. While the Bill expressly recognises that members of the public will require cannabis for medicinal purposes, it restricts the means of acquiring such cannabis to home-grow operations or the benevolence of a home-grower gifting cannabis “without the exchange of consideration”. This is short-sited and deficient in that the Bill denies those with medically certified grounds for cannabis use the benefits of acquiring product from a professional, licensed cultivator.
12. Since 2018 the South African Health Products Regulatory Authority (SAHPRA) has been licensing cultivators in terms of section 22C(1) of the Medicines and Related Substances Act 101 of 1965. In so doing SAHPRA has been certifying that such licensed cultivators comply with Good Manufacturing Practice (GMP), the global standard for



pharmaceutical production. As such, these licensed cultivators are subjected to rigorous quality standards by SAHPRA. Unfortunately the Bill in its present form, by prohibiting any commercial activities for medicinal use, denies all members of the South African public the opportunity to acquire product from these SAHPRA-licensed producers. Such SAHPRA-licensed facilities are required to test their products to ensure that they are free of heavy metal, pesticides, fungus, mycotoxins and other contaminants, and they are required to state clearly the cannabinoid content and dosage of their products. They are also required to implement rigorous record-keeping, risk-mitigation measures and the capability of product-recall should problems be detected by users. None of these standards apply to home growers, and yet the Bill consigns those with medically-certified grounds for cannabis use to consume home-grown cannabis. As such those with medical conditions will be required by law to take their chances, with the state playing no quality oversight role whatsoever, and patients not knowing what they are putting into their bodies.

13. The Bill in its present form is somewhat akin to legislating that a patient with a medical certificate for Penicillin is allowed to use Penicillin but may not buy Penicillin from a professional manufacturer of Penicillin, which is subject to regulatory oversight. Instead the patient must produce their own Penicillin at home by growing penicillium mould or must find a kind person who grows penicillium mould to gift them some Penicillin without charge, subject to no regulatory oversight whatsoever.
14. The concerns outlined here show that the mechanism proposed in the Bill is antithetical to the objective of including medicinal users in the Bill and as such there is no rational connection between the objectives and formulation of that section of the Bill.
15. We are not suggesting that the risks associated with home-grown cannabis are so serious that the practice should be disallowed, but rather that the quality controls associated with licensed facilities compliant with pharmaceutical manufacturing standards produce cannabis that is more suited to those requiring it on medical grounds and that such cannabis is indeed safer and for all other users too. The drafters will achieve their aims if they permit those with medical certificates (at least) to purchase cannabis from SAHPRA-licensed facilities.

NEW SUBMISSIONS ON REVISED BILL: "RECREATIONAL" USE

16. In his 2022 State of the Nation Address the President announced that commercial cannabis activities would create 130,000 new jobs. The Bill in its present form will delay this opportunity by years because it postpones any commercial activity to some future, unspecified legislative process, rather than addressing it in this one. Not only will the 130,000 jobs not be realised but neither will the potential annual tax revenue of R4bn estimated by former finance minister Tito Mboweni be collected.
17. The new version of the Bill purports to enable commercial activities in respect of "recreational cannabis" but makes these "subject to the enactment of national



legislation”, going on to declare that: “National legislation may be enacted to authorise and regulate commercial activities in respect of recreational cannabis.”

18. Above we have already raised the concern that “commercial activities” should not be synonymous with or applicable only to “recreational cannabis”. This conflation is not helpful.
19. Furthermore, it is legally meaningless for Parliament to grant itself the right to enact future legislation, since it already has that right. Doing so does not advance the development of a domestic cannabis market with the attendant jobs and tax revenue potential envisaged by the President.
20. What would make sense, however, is to authorise regulated commercial activities in cannabis, which could be specified as medicinal or recreational, subject to the promulgation of regulations by the Minister of Justice and Correctional Services in concurrence with the Minister of Trade, Industry and Competition.
21. Lastly we submit that the phrase “recreational use” is not necessarily helpful or appropriate. People use cannabis for a variety of reasons. Those without medical prescriptions often use cannabis to moderate stress, anxiety, insomnia, pain or other symptoms. We recommend that the term “adult-use cannabis” be used instead of “recreational” – this simply indicates a consenting adult choosing to use cannabis in the absence of a medical certificate. The term “adult-use” is the preferred terms in jurisdictions such as Canada and various states of the United States of America where cannabis markets are highly developed.

THE BILL REMAINS PUNITIVE

22. The Bill reduces the activities that can result in a member of the public being subjected to punitive consequences, and as such is a step forward. However it must be acknowledged that the Bill envisages many activities or situations leading to punitive consequences. The most egregious example is a person with a medical certificate seeking to purchase cannabis from a SAHPRA-licensed facility being guilty of an offence, given that the Bill prohibits a commercial transaction even in those limited circumstances.
23. It must be recognised that most cannabis users will not grow their own cannabis. Nor will they be gifted it for no consideration. Most cannabis users will continue to purchase what they consume. This is the social and economic reality that the Bill must take as its point of departure. As such the Bill in its present form would continue to criminalise most cannabis users in South Africa.
24. It is therefore worth reiterating from our earlier submission that criminalisation of cannabis is uncorrelated with the prevalence of cannabis usage between countries. The benefit of criminalising any commercial activity is therefore not apparent if its goal is to reduce usage. The WHO’s first 2008 World Mental Health Survey Initiative found that countries with stringent user-level illegal drug policies did not have lower levels of use than countries with liberal ones. The study found that (emphasis added): “The



Netherlands, with a less criminally punitive approach to cannabis use than the US, has experienced lower levels of use, particularly among younger adults.”³ This accords with the Western Cape High Court’s judgment in the *Prince* case that “countries with more punitive anti-drug policies do not tend to have lower drug use prevalence levels than those with more liberal policies.” In the present global context with numerous democracies having legalised a commercial market for either medicinal use, general adult-use, or both, and Germany on the verge of full adult-use legalisation, the Bill in its present form represents, relatively speaking, a punitive anti-drug policy. We urge the Committee to reconsider it.

25. As stated earlier, the simplest way to achieve this is to permit forms of commercial activity but makes these subject to the promulgation of regulations by the Minister of Justice and Correctional Services in concurrence with the Minister of Trade, Industry and Competition. This would retain the state’s role in setting policy and exercising oversight without requiring Parliament to return to square one of a new legislative process before any commercial activity becomes possible.

SUBMITTED BY DORON ISAACS
ON BEHALF OF
KAROO BIOSCIENCE PROPRIETARY LIMITED

³ Degenhardt, L., Chiu, W. T., Sampson, N., Kessler, R. C., Anthony, J. C., Angermeyer, M., ... & Karam, A. (2008). Toward a global view of alcohol, tobacco, cannabis, and cocaine use: findings from the WHO World Mental Health Surveys. *PLoS Med*, 5(7), e141.

